

Date of Hearing: April 1, 2024

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

AB 2333 (Santiago) – As Amended March 19, 2024

SUBJECT: State highways: airspace leases: report

SUMMARY: Requires the California Department of Transportation (Caltrans) to annually submit a report to the Assembly and Senate Transportation Committees on every airspace site leased by Caltrans. Specifically, **this bill**:

- 1) Beginning or before January 1, 2026, requires Caltrans to submit a report to the Assembly Committee on Transportation and the Senate Committee on Transportation that includes all of the following information on every airspace site leased by the department:
 - a) Department district number;
 - b) Parcel number;
 - c) Property number;
 - d) Route;
 - e) Street number;
 - f) Street name;
 - g) Tenant;
 - h) Start tenancy date;
 - i) End tenancy date;
 - j) Square footage leased;
 - k) Use type;
 - l) Last inspection date;
 - m) Whether the site was in compliance with the lease’s obligations based on the last inspection;
 - n) The type of action taken if the site is not in compliance with the lease’s obligations; and,
 - o) The site’s proximity to sensitive infrastructure.

EXISTING LAW:

- 1) Allows Caltrans to lease to public agencies or private entities the use of areas above or below state highways for any term less than 99 years. (Streets and Highways Code (SHC) Section 104.12)
- 2) Authorized emergency vehicles which are on active duty are given preference in the use of these areas, and no payment of consideration shall be required. (SHC 104.12)
- 3) Requires Caltrans to determine that the proposed use is not in conflict with the zoning regulations of the local government concerned prior to entering into any lease. (SHC 104.12)
- 4) Requires the leases to be made in accordance with procedures to be prescribed by the commission. (SHC 104.12)

- 5) Requires leases with private entities to be a competitive bidding process, unless the commission finds, by unanimous vote, that in certain cases competitive bidding would not be in the best interests of the state. (SHC 104.12)
- 6) Requires the revenues from the leases to be deposited in the State Highway Account. (SHC 104.12)
- 7) If leased property was provided to the department for state highway purposes through donation or at less than fair market value, the lease revenues shall be shared with the donor or seller if so provided by contract when the property was acquired. (SHC 104.12)
- 8) Allows Caltrans to may make the land or airspace available within the right-of-way of any highway, with or without charge, to a public entity to accommodate needed passenger, commuter, or high-speed rail, magnetic levitation systems, and highway and nonhighway public mass transit facilities. (SHC 104.12)
- 9) Requires Caltrans to consider future lease potential of areas above or below state highway projects when planning new state highway projects. (Streets and Highways Code Section 104.12)

FISCAL EFFECT: Unknown

COMMENTS: Airspace is the property under or within the right-of-way of an existing operating highway, and includes all Caltrans owned and operated facilities that are used to support the transportation system. Caltrans leases airspace within the state highway right-of-way if it can safely accommodate a secondary use. Caltrans is responsible for managing those airspace properties. Airspace is not property held for a future transportation use nor is it available for sale as it is not excess or surplus to the state's needs. By leasing airspace sites and licensing wireless facilities within freeway right-of-way, airspace generates revenue that is deposited into the State Highway Account.

In 2018, Caltrans was authorized to lease airspace or real property acquired for highway purposes for homeless services in certain cities for one dollar per month. Clarifying language was also included that, for the purposes of a park, or recreational use of airspace leases, Caltrans must find that the lease is for public access.

In 2019, the California Transportation Commission (CTC) passed a resolution on the procedure for leasing airspace to public entities (Resolution G-19-43), which authorized Caltrans to enter into leases with public agencies without specific CTC approval. It also required Caltrans to provide an annual report to the Commission on the active airspace leases.

I-10 Fire. On November 11th, 2023, a fire erupted in the airspace under the I-10 Freeway (I-10) in Los Angeles, in a pallet yard in the 1700 block of E. 14th Street near downtown Los Angeles. The fire quickly consumed the yard, multiple trailers, and a second pallet yard under the I-10. The I-10 was closed to traffic from November 11th to November 19th, 2023. Caltrans had been leasing the airspace to Apex Development Inc., since 2008. There is ongoing litigation between Caltrans and Apex regarding damages as a result of the fire, and potentially unpaid rent to Caltrans.

The fire highlighted some gaps and shortcomings of Caltrans' airspace leasing program. At the time of the fire, Caltrans did not have an up-to-date inventory of their active airspace leases. Caltrans committed to reviewing their active airspace sites and take action for any sites that might pose a safety risk.

In late November 2023, Caltrans released an initial assessment of their 600 active airspace sites. The initial findings highlighted key information on each site such as location, lessee, lease dates, and use type. Based on Caltrans' initial review, it appeared that the sites leased by Apex Development, Inc. are outliers, and relatively few sites present confirmed safety or fire concerns.

Caltrans identified 38 sites that had identified risks or warrant further inspection. These sites were identified based on results of recent inspections and characteristics of the site, including nature of known uses and proximity to critical infrastructure.

In February 2024, Caltrans released their review and recommendations for the airspace leasing program. One of the recommendations was maintaining an up-to-date inventory of all active airspace sites. This bill seeks to codify this recommendation by requiring Caltrans to submit an annual report to the Assembly and Senate Committees on Transportation detailing specified information on every airspace leased site. The specified information models the categories reported by Caltrans in their initial assessment in late November 2023.

According to the author, "Following the I-10 Freeway Fire last fall, Caltrans released recommendations to improve their airspace leasing program. AB 2333 codifies one of those recommendations by ensuring that Caltrans has an up-to-date inventory on all active airspace sites to prevent the unfortunate incident on Veteran's Day 2023 from ever happening again."

Committee comments:

Sensitive infrastructure. Moving forward, the author may wish to consider defining "sensitive infrastructure" to exclude certain classified projects in order to prevent publically releasing infrastructure related to state or national security.

Frequency of report. In addition, given the long-term nature of these leases, it is unclear if an annual report is necessary, or if a report every two year or more is a reasonable alternative.

Previous legislation. AB 2908 (Transportation Committee), Chapter 860, Statutes of 2000, enacts the Assembly Transportation Committee's annual omnibus bill of noncontroversial and technical provisions, including repealing certain legislative reports relating to airspace and land acquisitions.

AB 2525 (Zbur of 2024) expands the purposes for which these airspace leases may be issued to include an emergency shelter or feeding program, a secure vehicle lot program, or any combination of those purposes, within the City of Los Angeles. *AB 2525 is currently pending in this committee.*

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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